

PATENT

REMARKS

This paper is responsive to the Office Action dated April 27, 2004. The Office Action indicates acceptance of the drawings filed on February 18, 2004. Claims 1 – 8 and 11 – 33 were examined. Non-narrowing amendments have been made to claims 12 and 33. Claim 12 has been amended to remove ‘simultaneously.’ Claim 33 has been amended to change ‘including’ to ‘includes.’ Claim 20 has been amended to depend from claim 12.

Rejections under 35 U.S.C. §102(b) and §103(a) based on Kristol

The Office Action has rejected claims 1 – 8 and 26 – 31 under 35 U.S.C. §102(b) as anticipated by U.S. Patent No. 5,541,927 granted to Kristol et al. (“Kristol”). The Office Action also has rejected claims 11 – 13, 18 – 23, and 25 under 35 U.S.C. §103(a) as being unpatentable over Kristol in view of additional references, including U.S. Patent No. 5,502,756 granted to Crocker et al. (“Crocker”) and U.S. Patent No. 6,067,567 granted to Bartfai et al. (“Bartfai”).

Independent Claims 1, 12, 26, and 27

The consolidated status message in Kristol indicates **which multicast blocks have been received, but does not indicate which destination nodes have received multicast information.** Kristol states that the format of the consolidated status message is the same as the status message sent to a multicast source by individual group representative endpoints (col. 10, lines 22 – 24). The status message is illustrated as status packet 610 of Figure 6 in Kristol. The status packet 610 does not indicate which target nodes received multicast information. The status packet indicates an end point identifier and a virtual circuit identifier (See Figure 6 and Table 1). The endpoint identifier only identifies the node that has sent the status packet. The virtual circuit identifier identifies the virtual circuit between the multicast source and the identified endpoint. **Hence, the consolidated status packet of Kristol indicates the node sending the consolidated status packet.**

The Office Action refers to block 720 of Figure 7 in Kristol several times as support for the rejections. Block 720 of Figure 7 in Kristol discloses each destination node sending their individual status messages to a local exchange. Nothing in block 720 refers to consolidating the status messages or indicating destination nodes in a consolidated status message. The

PATENT

consolidated status message is disclosed in block 730 of Figure 7 (and similarly in block 830 of Figure 8) in Kristol. When the status messages are consolidated, Kristol does not disclose or suggest indicating acknowledging target nodes. The status of the multicast blocks from each individual status message is consolidated into a single status message. The consolidated status message only identifies the local exchange, and does not indicate the multicast destination nodes. **The consolidated status message of Kristol indicates which blocks have been received, but does not disclose or suggest indicating “which of the plurality of targets received multicast information” as recited in claim 1, and similarly recited in claims 12, 26, and 27.**

For at least the above reasons, independent claims 1, 12, 26, and 27 are allowable over the art of record. Furthermore, dependent claims 2 – 10, 13 – 25, and 28 – 33 are at least allowable because they depend on a corresponding one of the above allowable independent claims.

Independent Claim 11

The Office Action has rejected claim 11 under 35 U.S.C. §103(a) as being unpatentable over Kristol in view of Bartfai. Applicant respectfully traverses this rejection.

The Office Action admits that Bartfai does not disclose or suggest claim 11. In particular, neither Kristol nor Bartfai discloses or suggests “wherein the merged acknowledgement includes a single bit indicating whether all of the targets successfully received the multicast information” as recited in claim 11. Bartfai discloses an entire Acknowledgement Packet as indicating all expected nodes have received and processed a request (col. 6, lines 41 – 48), but does not disclose or suggest claim 11. The combination of Bartfai with Kristol is still insufficient to reject claim 11, so **the Office Action improperly relies on Applicant’s own specification as evidence that the above quoted claim language would have been obvious to one skilled in the art.** “It is never appropriate to rely solely on ‘common knowledge’ in the art without evidentiary support in the record, as the principal evidence upon which a rejection was based” (MPEP 2144.03, citing *In re Zurko*, 258 F.3d 1379 (Fed. Cir. 2001)). “[A]n assessment of basic knowledge and common sense that is not based on any evidence in the record lacks substantial evidence support” (MPEP 2144.03, citing *Id.*). **Looking to Applicant’s own disclosure is impermissible hindsight. “[I]mpermissible hindsight must be avoided and the**

PATENT

disclosure is impermissible hindsight. “[I]mpermissible hindsight must be avoided and the legal conclusion must be reached on the basis of the facts gleaned from the prior art” (MPEP 2142).

For at least the reasons given above, independent claim 11 is allowable over the art of record.

Dependent Claim 23

The Office Action has rejected claim 23 under 35 U.S.C. §103(a) as being unpatentable over Kristol in view of Crocker. Applicant respectfully traverses this rejection.

Kristol does not disclose or suggest “the switching medium combines the acknowledgements in response to having scheduled a multicast data transfer” as recited in claim 23. As with claim 11, the Office Action relies on Applicant’s disclosure. Indeed, the Office Action specifically refers to claim 12 as support that claim 23 would have been obvious to one of ordinary skill in the art, despite the absence of such a suggestion or disclosure in the art of record. Hence, the Office Action again uses impermissible hindsight, and relies merely on “common knowledge in the art” without any evidentiary support, which is “never appropriate” (MPEP 2144.03).

For at least the reasons given above, dependent claim 23 is allowable over the art of record.

Dependent Claims 29 and 30

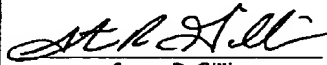
The Office Action has rejected claims 29 and 30 under 35 U.S.C. §102(b) as being anticipated by Kristol. Applicant respectfully traverses these rejections. As previously stated, the consolidated status packet of Kristol does not indicate acknowledging target nodes. The consolidated status packet indicates the source of the consolidated status packet and successfully received data blocks. The Office Action mistakenly interprets Kristol’s disclosure. The consolidated status message of Kristol does not indicate ports of acknowledging target nodes and does not identify acknowledging target nodes.

PATENT

For at least the reasons given above, dependent claims 29 and 30 are allowable over the art of record.

Conclusion

In summary, claims 1 – 8 and 11 – 33 are in the case. All claims are believed to be allowable over the art of record, and a Notice of Allowance to that effect is respectfully solicited. Nonetheless, if any issues remain that could be more efficiently handled by telephone, the Examiner is requested to call the undersigned at the number listed below.

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 Steven R. Gilliam	Jul-27-2004 Date

Respectfully submitted,



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